



POLICE DEPARTMENT

August 27, 2018

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Raymond Caban :

Tax Registry No. 929806 :

Housing Borough Manhattan :

Case No.

2017-18133

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

Javier R. Seymore, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent:

Roger S. Blank, Esq.
373 Park Avenue South, 6th Floor
New York, NY 10016

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Raymond Caban, while assigned to PSA 1, on or about March 22, 2017 through May 11, 2017, while off-duty, in [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Caban sent inappropriate text messages to an individual known to the Department and attempted to engage in an inappropriate relationship with her outside the scope of his official police duties.

P.G. 203-10 Page 1, Paragraph 5 **PUBLIC CONTACT-PROHIBITED
CONDUCT GENERAL REGULATIONS**

2. Said Police Officer Raymond Caban, while assigned to PSA 1, on or about March 22, 2017 through May 11, 2017, while off-duty, in [REDACTED] failed and neglected to take police action after learning of alleged criminal activity being committed by an individual known to the Department.

P.G. 202-21 Page 1, Paragraph 8 **POLICE OFFICER-DUTIES AND
RESPONSIBILITIES**

3. Said Police Officer Raymond Caban, while assigned to PSA 1, on or about May 11, 2017, while off-duty, in Kings County, failed and neglected to properly safeguard his off-duty firearm, to wit, a Glock 26, serial number GUS471.

P.G. 204-08 Page 2, Paragraph 7 **FIREARMS-GENERAL REGULATIONS
UNIFORM AND EQUIPMENT**

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on June 19, 2018. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, assessing the credibility of the witness, and Respondent having pleaded Guilty, the Court finds Respondent Guilty. As a penalty, the Court recommends that Respondent be dismissed from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time he is to remain on the

force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent be suspended without pay for 30 days, and forfeit another 15 vacation days, as a penalty.

SUMMARY OF EVIDENCE IN MITIGATION

This matter came to disciplinary attention following an investigation into an allegation that Respondent [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As part of the investigation, Respondent was the subject of a targeted integrity test conducted on March 21, 2017 (Tr. 3, 14).

As part of the integrity test, Respondent was on duty when a woman called his attention to a second woman consuming alcohol in public and rolling a marijuana cigarette. Unbeknownst to Respondent, these both were undercover police officers working for IAB. Respondent placed the second woman under arrest for unlawful possession of marijuana. He recovered two additional bags of marijuana while searching the woman incident to arrest. The woman was transported to the 76 Precinct for processing. Once at the stationhouse, Respondent vouchered the marijuana and completed all arrest paperwork. The undercover was released from custody with a desk appearance ticket. At this point, IAB deemed Respondent to have passed the integrity test (Tr. 3-4, 13-14).

Respondent, however, then obtained the undercover's telephone number from her prisoner pedigree card. He admitted that this was improper. On March 22, 2017, the day after the integrity test, Respondent initiated communication with the undercover via text message. In the text, Respondent expressed romantic interest and asked her out on a date.

At the mitigation hearing, Respondent attributed this contact to a friendly rapport he had developed with the woman on the date of her arrest. Respondent and the undercover exchanged approximately 250 text messages over the next week. The communication ceased for a time. Respondent testified that he stopped communicating with the undercover because he realized his conduct was inappropriate and wrong (Tr. 4, 14-16, 32-34).

For reasons not stated at the hearing, the undercover re-initiated contact with Respondent on April 19, 2017, saying, in sum and substance, "Hey, how have you been doing?" Respondent replied to her and ultimately arranged to meet in person (Tr. 15-16, 35, 74).

On May 2, 2017, Respondent and the undercover met at a public park. During this meeting, the undercover told Respondent that she sold marijuana. Respondent testified at the hearing that she might have said this more than once. He could not recall whether he said, "It's okay, just handle your business", in response to the UC's admission, but contended that if he had said that, it was said in jest to test the veracity of her statement (Tr. 17, 37, 49).

Following the May 2, 2017, meeting, Respondent and the undercover continued to exchange hundreds of text messages, some of which were sexually explicit in nature. They arranged a second meeting for May 11, 2017. On this date, Respondent met the undercover at a restaurant for breakfast. There she told him that she needed to leave to meet a friend to make a drug sale. Respondent indicated at the mitigation that the undercover asked him several times to accompany her to make the drug sale, but he declined (Tr. 18-19, 40, 42, 51-52).

Respondent further claimed that he would have arrested the undercover if he actually saw her in possession of marijuana. When questioned about his failure to take police action during the meeting, Respondent noted that he did not have sufficient legal authority to conduct a search or to place the undercover under arrest. Nevertheless, he acknowledged that it was his obligation to notify the local precinct or the Narcotics Bureau. He testified that he was "not certain" why he did not do so, but added, "I just thought she was saying that and I left it at that" (Tr. 17-18, 36-37, 49-51).

Before leaving the restaurant, Respondent and the undercover arranged to meet at a hotel later that day. Respondent maintained that it was the undercover who suggested meeting at the hotel. Respondent assumed that he was meeting the undercover at the hotel for a drink. He adamantly denied that sex was offered or expected. Upon arriving at the hotel, Respondent was confronted by several IAB officers. He eventually was escorted to his personal vehicle, which was parked nearby. At that time, Respondent's unsecured off-duty firearm was recovered from the vehicle's trunk (Tr. 19-20, 43-44, 53-54).

Respondent has been charged with three specifications for his misconduct in this case. Respondent has accepted responsibility by entering a guilty plea to all charges, and has expressed remorse for his actions. Notwithstanding his contrition, Respondent maintains that he was not in the right state of mind when he committed the acts charged in the specifications. Specifically, Respondent indicated that he was suffering from [REDACTED] and was taking [REDACTED] that led to poor judgment. Respondent testified that he was involved in a motor vehicle accident in January 2015 that left him with [REDACTED]

As a result, he [REDACTED] and was [REDACTED]

[REDACTED]). Respondent testified that these [REDACTED] impacted his mood, judgment and sleep habits. Although he returned to full duty status in February 2016, Respondent testified that he continued to suffer from [REDACTED] and adverse side effects [REDACTED] (Tr. 20-25).

Also presented were a Medscape.com report on [REDACTED] between [REDACTED] (Respt. Ex. A). The report stated that the [REDACTED] could increase serotonin. An article from the *Proceedings of the National Academy of Science of the United States of America* (Respt. Ex. B) found that serotonin could lead to increased prosocial behavior, meaning an aversion to harming others. Respondent since [REDACTED] (Tr. 29, 56-57).

Respondent testified that he also was the primary caretaker for his [REDACTED] who was diagnosed with [REDACTED] in March 2016. Respondent also was in the process of [REDACTED] Respondent described the [REDACTED] (Tr. 25-28).

Following the mitigation hearing, Respondent submitted several reputational letters from former and current colleagues as well as members of the community. Respondent's colleagues described him as competent, highly motivated, and professional. Among members of the community, Respondent is known as an upstanding "family man."

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that

was considered in making this penalty recommendation is contained in an attached confidential memorandum.

There is no question that Respondent's misconduct is troubling. He wrongly obtained personal information from confidential Department records and used it to pursue a sexual relationship with a civilian he had arrested and to whom he had issued a DAT the previous day. Using his position in this manner carried with it the intrinsic risk of unduly intimidating a civilian whose charges had not yet been resolved. It is unacceptable for a uniformed member of service to put such personal desires above the interests of both the Department and the public he is sworn to protect.

Respondent is charged in the second specification with failure to take police action under Patrol Guide § 202-21. This section is inapposite, however, because it applies to on-duty police officers. The more applicable section is § 212-12, which specifically covers the gathering and reporting of intelligence in situations where an officer is "unable to effect a summary arrest."

In any event, Respondent had no real answer for why he did not make a notification to the Narcotics Bureau or the local precinct when the undercover told him that she was heading off to sell marijuana. At one point he suggested that he thought she was essentially just making conversation: "I don't - I'm not certain, sir. I was just - I didn't - could I have done that? I didn't see - my thinking is that I didn't see her engage in any criminal activity and things of that nature. So I just - I just thought she was saying that and left it at that."

This vacillation on Respondent's part leads to the conclusion that Respondent might have refrained from reporting the woman because, at the very least, he wanted to continue pursuing a relationship with her. But no convincing evidence was presented at trial that

Respondent intentionally refrained from reporting possible criminality in exchange for the woman's continued involvement with him, or that he communicated this intent to the undercover, even implicitly. It is important to highlight that Respondent stopped contact with the supposed arrestee before meeting with her, and that after a three-week hiatus it was the undercover who resumed contact with him. That the undercover initiated the second round of texts undermines the argument that their subsequent interactions involved coercion or that it constituted part of a quid pro quo exchange. In sum, the Advocate is asking this tribunal to make an inferential leap that is not supported by the preponderance of the credible evidence presented at this trial.

The Advocate recommended that Respondent be dismissed from the Department and argued that *Case Nos. 2015-13794, -804 & -805* (Jan. 3, 2017), presented the factual scenario closest to the case at bar (Tr. 72). The Court disagrees. In *2015-13794 et al.*, an officer was dismissed from the Department for requesting to see and touch the breasts of a female prisoner in exchange for releasing her with a desk appearance ticket. Subsequently, the officer sent the woman sexually explicit text messages from her boyfriend's cellphone while he was being held in police custody awaiting disposition of his case, and demanded that she send the officer a photo of her genitals.

[REDACTED] *et al.* involved the crime of attempted official misconduct, Penal Law §§ 110/195.00 (1) (with the intent to obtain a benefit, committing an act relating to one's office but constituting an unauthorized exercise of official functions, knowing that such act is unauthorized): the officer there explicitly demanded sexual acts from an arrestee in his custody in exchange for favorable treatment within the criminal justice system. He made similarly vulgar sexual demands a second time when her boyfriend was in custody. In

short, an on-duty police officer used his position as an officer of the law to coerce a civilian in his custody and control for the purpose of receiving lewd sexual favors.

The facts established at this mitigation hearing are distinguishable in significant ways:

- First, the woman was not in custody, nor was anyone she would naturally care about, like a boyfriend. She already had been released on a desk appearance ticket.

- Second, after her release, Respondent was not likely to be in a position to hold anything over the head of the woman, like expeditious release from custody or favorable treatment of someone else in custody.

- Third, as inappropriate as the initial contact was, the record is devoid of evidence that Respondent made unwanted demands. In fact, Respondent ceased contact with the woman after an initial flurry of texts, and it was IAB that reinitiated the communication after a three-week hiatus. Although the text messages were not introduced into evidence, the Advocate described the progression of the relationship as follows: "The Respondent expressed a romantic interest in the undercover and asked her to meet him for a date. . . . As the relationship developed over multiple text messages, the Respondent and the undercover agreed to meet up for a date" (Tr. 4, opening statement). Thus, the record is devoid of persuasive evidence that Respondent used the reprehensible strong-arm tactics described in the termination case cited above.

In that light, Respondent's case is much closer to matters like *Case No. 2015-14217* (Feb. 8, 2016). There, a detective forfeited 30 vacation days and was placed on one year of dismissal probation for exchanging 442 text messages, some of which were of a sexual nature, with a woman he previously had arrested for a narcotics offense and for discussing

the facts of her case with her, which led to the case being dismissed. Similarly, in *Case No. 2015-13061* (Apr. 18, 2016), a police officer forfeited 30 vacation days and was placed on one-year dismissal probation for sending a sexually explicit text message to a woman he met when he responded to a domestic incident in which she was involved.

The closest precedent suggested by the Advocate for Respondent's association with an arrestee was *Case No. [REDACTED]* in which a detective contacted a complainant in a case to which he was assigned and began a sexual relationship with her. The complainant also had a criminal record. The detective forfeited 20 vacation days for criminal association.

Finally, recent penalty precedent for leaving firearms in automobiles is the loss of 20 vacation days. See, e.g., *Case No. 2017-17921* (June 21, 2018); *Case No. 2016-1677* (Dec. 13, 2017); *Case No. 2017-17286* (Nov. 20, 2017).

The Advocate argued that the totality of Respondent's misconduct required separation from the Department (Tr. 67, 70). The Court agrees that Respondent engaged in serious misconduct by using police records to contact a woman he had arrested for marijuana possession, in order to develop a personal and intimate relationship with her. Respondent further failed to report the woman to the Department for criminal intelligence purposes when she made statements to him regarding criminal activity. He also failed to safeguard his weapon when he left it in his vehicle while meeting the undercover at a hotel.

The Court does not agree with the Advocate, however, that Respondent's cumulative misconduct necessitates his separation from the Department. Respondent has no prior disciplinary history over 16 years with the Department. Moreover, in 2016 and 2017 he was rated as "Highly Competent/Competent." He is well regarded by colleagues, associates

and friends. It is also important to highlight that he passed the most serious parts of the integrity test: whether he would steal seized marijuana a [REDACTED] and whether he would accompany the undercover officer to a drug sale.

The Court has considered and rejected any mitigating value to Respondent's [REDACTED] proceedings, his [REDACTED] use, or his caretaker responsibilities. Although it provides context for why he might have sought another relationship, it is not an excuse for his misconduct. Furthermore, without more evidence, the Court cannot accept Respondent's assertion that his serotonin levels were raised and that this accounted for his behavior.

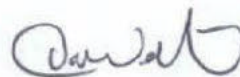
The bottom line is that Respondent's admitted misconduct, viewed in its totality, does not rise in the Court's judgment to the termination level. As such, the Court recommends that Respondent be dismissed from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent be suspended without pay for 30 days, and forfeit another 15 vacation days, as a penalty.

APPROVED

OCT 24 2018

JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RAYMOND CABAN
TAX REGISTRY NO. 929806
DISCIPLINARY CASE NO. 2017-18133

Respondent was appointed to the Department on July 1, 2002. His last three annual performance evaluations were as follows: 3.5 "Highly Competent/Competent" in 2017 and 2016, and 3.0 "Competent" in 2015. Respondent has been awarded one Department medal for Excellent Police Duty.

[REDACTED]

On September 26, 2017, Respondent was placed on Level I Disciplinary Monitoring based on his modified duty status. That monitoring remains ongoing.

Respondent has no prior formal disciplinary history.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials